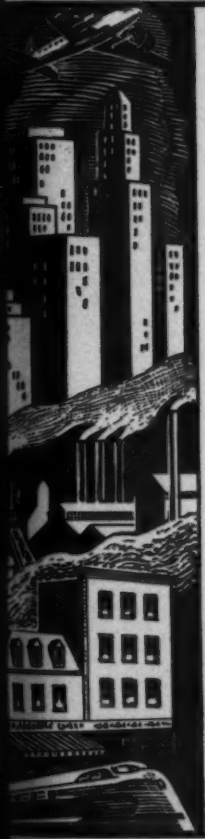
The
ORPORATION JOURNAL

Trademark ®

the incorporation, qualification and statutory repre-tation of corporations, The Corporation Trust Com-y, CT Corporation System and associated companies deal with and act for lawyers exclusively.

l. 21, No. 5 APRIL—MAY 1955 Complete No. 396



Federal tax-exempt bonds ruled a proper item to be included in the calculation of net worth of corporation liable to franchise tax

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Vermont franchise tax as applied to foreign corporations regarded as levied for privilege of doing business in state and not for doing business in a corporate capacity . . Page 95

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ished by The Corporation Trust Company and Associated Companies

from the State Report and Tax Notification Department of

CT SYSTEM

THE CORPORATION TRUST COMPANY

120 BROADWAY, NEW YORK 5, N. Y.

February 17, 1955

RE: MASSACHUSETTS--RETURNS OF INFOR
EXTENSION OF TI

The time for the filing of Re
Source, normally filed with the C
Taxation, Income Tax Bureau, 40 C
chusetts, on or before March 1, 1
in January, has been extended to

from the State Report and Tax Notification

CT SYSTEM

THE CORPORATION TRUST COM

120 BROADWAY, NEW YORK 5, N. Y.

RE: NORTH CAROLINA--INTANGIBLE PROPE
CHANGE IN DUE D

The time for filing State In
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as outlined in our Bulletin sen
to April 15 by House Bill 21,

The requirements are a
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RE: GEORGIA--INCOME TAX RETURN
CHANGE IN DUE DATES

Act 92, Laws of 1955, changes the due dates of the 195
poration income tax returns and of taxes for the calendar ye
1954, and for income tax returns filed and taxes paid for fi
years ending on and after January 1, 1955.

Returns will hereafter b
March 15, from calendar ye
cal year companies on or
following the close
after, as here

from the State Report and Tax Notification

CT SYSTEM

THE CORPORATION T
120 BROADWAY,

RE: IDAHO--INCOME TAX
EXTENSION OF TIME

The time for filing income tax re
extended from March 15 to April 15.
extended from the 15th day of the third
close of the fiscal year to the 15th day

The extension has been effected by a
Tax Collector pursuant to authorization gi
to grant a 31-day extension in 1955 and sub
Interest will not be imposed on the amount o
the extension.

ONLY the beginning—

**Here you see the subjects covered by fi
of the Special Notification Bulletins alre
sent to CT System users this year. There
be many more—each of them high-light
an important change in state tax laws
requirements. Think of the time and effo
this one feature of the CT System wi
save you during *a heavy legisla-
tive year* such as 1955.**

RE: MISSISSIPPI--GROSS SALES TAX
CHANGE IN RATES

Effective March 1, 1955, House Bill 17 increases the
eral sales tax rate from 2% to 3%, with the exception of
following: automobiles, trucks and tractors, 2%; farm t
sold to farmers, 1%; pasteurized milk sold by pasteurize
whiskey, wholesale and retail, 5%; city buses and taxicab
2%; wholesale sales by manufacturers in Mississippi to r
1/2 of 1%; contractors, 1 1/2% on gross income received f
tracts over $3,000; gross income from parking lots and f
housing, 3%. Installation charges are to be included in
income in connection with sales of personalty.

The
CORPORATION JOURNAL
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APRIL—MAY 1955

Contents

Recent Decisions

NO TIME TO WASTE

Estimates on the number of corporations "transacting busines and still to be qualified as foreign under the District of Columbia new corporation law run as high as 3,000. A last minute rush of filing seems sure. Don't get caught in it. Don't wait until too late.

Monday, June 6, as indicated in the article beginning on the opposit page, is the last day for qualification.

Should you, as counsel, decide qualification of your clients by tha date is necessary, order the required certified copies of charter docu ments as soon as possible. State departments will be able to fill earl orders. Later, when requests for certified copies begin to pile up, ma be *too late*.

Lawyers may obtain free information on the requirements of th District's new law as it applies to foreign corporations at any C office. A copy of the latest edition of "What Constitutes Doing Bus ness," is also available for the asking. If you want CT to expedite th obtaining of certified copies, compile qualification forms, submit the to you for approval as counsel and then file and record them for yo in the District, we shall be happy to do so for a modest charge.

District of Columbia Business Corporation Act

Qualification of Foreign Corporations

MANY foreign corporations active in the District of Columbia have obtained authority to do business as such, in accordance with the Business Corporation Act*, which became effective on December 5, 1954. Section 99 provides that a foreign corporation shall procure a certificate of authority "before it transacts business in the District".

Those foreign corporations which were transacting business in the District on December 5, 1954 for purposes for which a certificate of authority is required, are directed to qualify "within six months after the effective date of this Act", by Section 118. All corporations in this classification are required to comply with the act before the close of business on Monday, June 6, 1955. Failure on the part of such foreign corporations to comply subjects them to various penalties, liabilities and restrictions provided in the Act for transacting business without a certificate of authority.

The new law contains detailed provisions for the qualification and regulation of foreign corporations doing business in the District. There has not previously been in effect such legislation providing for the qualification of a foreign corporation.

The statute does not define the term "transact business", other than to enumerate a few acts which do not require qualification. Section 99(b) provides that:

> "(b) A foreign corporation shall not be required to procure a certificate of authority merely for the prosecution of litigation, the collection of its debts, or the taking of security for the same, or by reason of the appointment of an agent for the solicitation of business not to be transacted in the District, nor for the sale of personal property to the United States within the District of Columbia unless a contract for such sale is accepted by the seller within the District or such property is delivered from stock of the seller within the District for use within the District."

This situation is similar to that in most of the states where, however, a large body of decisional law has been built up on the subject of doing business. In the District of Columbia, the

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* For a discussion of this Act (Public Law 389, Chapter 269, Laws of 1954), see "New District of Columbia Business Corporation Act", page 23, THE CORPORATION JOURNAL, October—November, 1954. Copies of this discussion are available upon request. Also see article by Albert Philipson in the November and December 1954 issues of the JOURNAL of the Bar Association of the District of Columbia which deals with the new Act; and a revision of Mr. Philipson's article which appeared in the January issue of THE BUSINESS LAWYER.

subject of doing business has been important chiefly in connection with liability to taxes and to service of process. Qualification decisions are lacking in view of the absence of any statute requiring qualification.

The general situation as to qualification may be summarized as follows:

(1) It is possible that a foreign corporation is not exempt from qualification requirements, as it would be in the states, on the ground that it transacts business exclusively in interstate commerce. It has been held that the commerce clause of the Constitution does not limit the power of Congress in legislating for the District. Consequently, Congress could require foreign corporations engaged solely in interstate commerce in the District to qualify there. Whether Congress has done so or intended to do so is another matter. Probably the courts will have to furnish the answer.

(2) If a foreign corporation's activities in the District are of a kind which would clearly constitute carrying on intrastate business in a state, qualification will be necessary. A number of principles are well established by decisions in the States. In addition to its book "What Constitutes Doing Business", The Corporation Trust Company maintains a complete record of citations to cases dealing with this subject.

(3) Where the foreign corporation has been paying the District of Columbia franchise tax, or if the corporation is one which will be liable to that tax upon commencing operations in the District, counsel will doubtless consider the advantages of qualification—especially if the doing business question is a close one. The costs of qualification are relatively minor—a $20. initial fee, plus a $2. indexing fee and a small recording fee, and a $10. annual report fee. These costs, and the fact that a process agent must be designated, may be more than offset by the advantages which stem from qualification, such as the elimination of concern over penalties for failure to qualify and, in general, the freedom of action and the free hand in adjusting business methods to the needs of the moment which ordinarily flow from authority to do business in the jurisdiction.

domestic corporations

ILLINOIS

Statutory provision for staggering election of directors held to violate constitutional provision.

Article XI, Section 3, of the Illinois Constitution, which plaintiff stockholder in defendant corporation contended was violated through the election of nine directors in accordance with by-laws conforming to Section 35 of the Illinois Business Corporation Act, reads as follows: "The general assembly shall provide, by law, that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there

are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner." Section 35 of the Corporation Act reads: "When the board of directors shall consist of nine or more members in lieu of electing the whole number of directors annually, the by-laws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes."

The Circuit Court of Cook County traced the constitutional provision from its adoption in 1870 and the history of staggered election of directors prior and subsequent to that date. The court emphasized that the quoted section of the State Constitution "guarantees to each stockholder the choice between straight and cumulative voting as well as the enjoyment of maximum voting strength proportionate to his shareholding. Classification of directors and their election for staggered terms defeats that guarantee." Plaintiff's motion for a declaratory judgment was allowed, to include "a declaration that Section 35 of The Business Corporation Act is unconstitutional".

Wolfson v. Avery et al., Circuit Court of Cook County, February 1, 1955. Commerce Clearing House Court Decisions No. 528300. (*An appeal to the Illinois Supreme Court has been filed.*)

foreign corporations

ARKANSAS

Loan by unlicensed foreign corporation consummated at its Arkansas office ruled to be doing business so as to uphold service of process on company.

The appellant Ohio corporation, not licensed in Arkansas, at an office in Fayetteville in the latter state, effected a loan to the appellees, based upon papers signed and money paid to them in Arkansas. "This", observed the Supreme Court of Arkansas, "clearly constitutes the doing of business in Arkansas by an undomesticated foreign corporation". Service upon the individual transacting such business for the foreign corporation as its agent, was held

to constitute proper service in a suit seeking to cancel the note and an accompanying mortgage on the grounds of usury.

Public Loan Corporation v. Stanberry et al., 272 S. W. 2d 695. Wade & McAllister of Fayetteville, for appellants. Peter G. Estes of Fayetteville, for appellees.

ILLINOIS

New York court construes Illinois statute on two-year survival of causes of actions or proceedings by or against Illinois corporations as embracing arbitration proceeding.

Respondent Illinois corporation, a party to contracts with appellant foreign government, which contracts were to be construed according to the laws of New York, had been dissolved within two years before arbitration proceedings were had which resulted in an award of $40,636. against respondent. The company and its liquidator had been given notice of the proceedings by mail, but had not responded. Judgment was entered in New York and an action commenced in the Federal courts in Illinois on the New York judgment. Thereupon, the present proceedings to vacate in the New York courts were commenced, and the action in Illinois was stayed.

The New York Supreme Court, Appellate Division, First Department, concluded that the proceedings were commenced in time, since they had been begun within two years after dissolution, as required by the Illinois law governing the survival of remedies by or against Illinois corporations. Directing reinstatement of the award, the court referred to the Illinois statute and remarked: "Its language is so broad that we feel compelled to construe it as intending to preserve all remedies available to a contract creditor anywhere under the terms of his contract and not merely remedies available in Illinois under Illinois law."

Arbitration between Republique Francaise and Cellosilk Mfg. Co., 134 N. Y. S. 2d 470. Edwin W. Schall, of counsel, Cleary, Gottlieb, Friendly & Hamilton of New York City, for appellant. John P. Gorman, of counsel, Francis X. Nestor of New York City; Thomas P. Riordan of Chicago, Ill. (of Illinois Bar) with him on the brief; Gorman & Nestor of New York City, for respondent Cellosilk Mfg. Co. and Nathan J. Brown, both appearing specially.

MARYLAND

Foreign corporation ruled subject to service of process where it sold hearing aids through a partnership whose business it controlled and dominated.

The plaintiffs, Maryland residents constituting a partnership, appealed from an order dismissing an action against the defendant foreign corporation for lack of jurisdiction. The plaintiffs held a franchise contract to act as exclusive

distributor in certain Maryland counties of hearing aids manufactured by the defendant. The action to recover damages for alleged breach or wrongful termination of contract was dismissed on the ground that the defendant was not doing business in the state within the meaning of the Maryland Code, Art. 23, Section 88(a).

The United States Court of Appeals, Fourth Circuit, noted that the evidence clearly indicated that the plaintiffs were more than mere dealers in or distributors of the defendant's products. The plaintiffs' business was controlled and directed by the defendant; all sales were made on order forms provided by the defendant at prices fixed by it and were reported to the defendant who wrote the purchaser with regard thereto; advertising was furnished and paid for by the defendant; the defendant gave a written guaranty on every aid sold by the plaintiffs and authorized the plaintiffs to make the contract of guaranty on its behalf; the plaintiffs were authorized to use the defendant's trade name in their business.

The order of dismissal for lack of jurisdiction was reversed and the court, remanding the case for further proceedings, remarked: "Upon the evidence taken as a whole, however, it is impossible to escape the conclusion that, through the plaintiffs, defendant was advertising and selling its hearing aids in the State of Maryland, and that the business was in effect done in the defendant's name and that it was as completely controlled by the defendant as it would have been if plaintiffs had been mere selling agents. Furthermore, there can be no doubt but that defendant actually participated in the sales made by plaintiffs, since the guaranty given in connection with the sale of a hearing aid was part of the sale, and in making the guaranty the plaintiffs were unquestionably acting as agents of defendant."

Kahn et al. v. Maico Company, 216 F. 2d 233. Isidore Ginsberg (Hyman Ginsberg and Ginsberg & Ginsberg, on brief), of Baltimore, for appellants. Stuart S. Janney, Jr., (Robert M. Thomas and Venable, Baetjer & Howard, on brief), of Baltimore, for appellee.

MINNESOTA

Service upon unlicensed foreign corporation set aside by federal court, where made upon exclusive local distributor as its agent.

Defendant, an unlicensed Wisconsin corporation, with its principal office in that state, appeared specially in the United States District Court, District of Minnesota, Third Division, and sought to have service quashed where made upon it in Minnesota by serving an individual named Nienaber who acted as an exclusive distributor for its products in southeastern Minnesota. It had no property, office, officer, employee, agent or salesman in Minnesota, and its name was not listed in a local telephone directory.

Noting that the Minnesota statute provided for service upon a foreign corporation "by delivering a copy to an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons," the court observed that "the facts of the instant case make clear that Nienaber was not a managing agent nor an employee of defendant. He was and is a distributor. Conceding that his activities partake to some extent of those peculiar to a sales manager, the controlling facts do not

make Nienaber an 'authorized' agent within the requirements of law." The court concluded that service of process, under either the state or federal requirements, was not made on an "authorized" person. A motion to quash the service was, therefore, granted.

Consumers Services, Inc. v. Cleaver-Brooks Co., 117 F. Supp. 585. Douglas Hall of Hall, Smith & Hedlund of Minneapolis, for plaintiff. John L. Hannaford of Doherty, Rumble & Butler of St. Paul, for defendant.

MISSISSIPPI

Unlicensed foreign corporation, making interstate shipments to local dealers, ruled not "doing business" so as to be required to be qualified, although having "contact men" who assisted the local dealers.

A Delaware corporation, not licensed in Mississippi, having its principal place of business in Minnesota, shipped certain goods from Memphis, Tennessee, f.o.b. to Collins, Mississippi, in interstate commerce. The trial court dismissed the suit, sustaining a contention of the defendant that the corporation, suing for the goods sold and not paid for, was a foreign corporation "doing business" in Mississippi which had failed to qualify as such and was barred by statute from bringing suit in the state courts.

Upon appeal, the Supreme Court of Mississippi reversed this ruling and gave judgment for the corporation. The court stressed that the company had no place of business in Mississippi and that no officer resided in the state. Activities of certain contact men, acting for the company in the state in advising local dealers how they might best promote sales and in investigating the solvency and suitableness of sureties to local dealers' bonds and in locating and recommending a suitable local dealer, were also noted by the court in the course of its opinion.

J. R. Watkins Co. v. Flynt et al.,* 72 So. 2d 195. Henley, Jones & Woodliff of Jackson, for appellant. W. U. Corley of Collins, for appellees.

* The full text of this opinion is printed in the **State Tax Reporter,** Mississippi, page 10,016.

PENNSYLVANIA

Unlicensed foreign corporation maintaining one-room one-man office ruled not doing business so as to sustain service of process.

In an action to recover damages for injuries sustained by plaintiff, the defendant corporation moved to dismiss the complaint on the ground of lack of venue in the United States District Court, E. D. Pennsylvania. The defendant, an Ohio corporation not authorized to transact business in the state, maintained a one-room office in Philadelphia. A single commission salesman, covering several states, kept the office which used a telephone answering service and served as a place to receive mail and store samples. All

orders were sent to the home office in Ohio for acceptance or refusal.

The court, in granting the motion to dismiss the complaint, applying the rule laid down in a Pennsylvania Supreme Court decision involving a like question, concluded that "this case is completely lacking in the essential 'solicitation plus other activities' to bring the defendant in the legal category of 'doing business' in Pennsylvania."

Solt v. Interstate Folding Box Co.,* 123 F. Supp. 376. Leon H. Kline, David Berger of Philadelphia and Israel T. Klapper of Hazleton, for plaintiff. Howard R. Detweiler, Frank R. Ambler of Philadelphia, for defendant.

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* The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 11,470.

Steamship company ruled doing business and subject to service of process made on husbanding agent.

Defendant steamship company moved to dismiss or to set aside service of process on the ground that it was not doing business in the federal district and that service on a corporation as its agent was not authorized by appointment or law. The facts established that the defendant's vessels stopped at Philadelphia or vicinity seven times in four years. The United States District Court, E. D. Pennsylvania, held that the defendant was doing business. Furthermore, the court ruled that service on a corporation which acted as defendant's husbanding agent and performed the usual services for manning, maintaining and supplying the defendant's vessels when in port, was valid even though it was not so acting for the defendant at the time of service of process. Accordingly, the motion to dismiss or set aside the service was denied.

Murphy v. Arrow Steamship Co., Inc., 124 F. Supp. 199. Freedman, Landy & Lorry of Philadelphia, for plaintiff. Rawle & Henderson of Philadelphia, for defendant.

SOUTH CAROLINA

Service upon Secretary of State ruled as not giving jurisdiction in South Carolina over withdrawn foreign corporation upon a cause of action arising in another state.

One of the defendants, a North Carolina corporation, until May, 1952, was domesticated and doing business in South Carolina. In May, 1952, the corporation withdrew from the state and since that time had done no business in South Carolina and had no agents there for the transaction of business. The plaintiffs, residents of South Carolina, instituted a tort action against the defendant and others on causes of action which arose in North Carolina in March, 1952, and which had no connection with any business transacted by the defendant in South Carolina while it was domesticated therein. Service of process was attempted by delivering copies thereof to the Secretary of State

A BIG DAY IN A BIG INDUSTRY

85,000 SIGNATURES AND SEAL IMPRESSIONS

$109,500,000 SALE

The sale of assets of American Republics Corporation to Sinclair Oil & Gas Company through Alban Corporation probably established a new all time high – one of the documents alone made a pile 168 feet high – in paper work for a financial transaction. The sale was arranged by Lehman Brothers. Here you see some of it being handled – in CT's Wilmington office.

In addition to the meeting space, CT also provided clerical help, arranged hotel reservations and created a cafeteria overnight in another part of the office. In Delaware, service is spelled serviCTe.

and mailing copies to the defendant and by service upon the alleged statutory agent of the defendant within the state.

The question which was presented for determination to the Supreme Court of South Carolina was: "Can a resident of South Carolina obtain jurisdiction in South Carolina, of a foreign corporation previously domesticated in South Carolina, upon a cause of action arising in another state and not connected with any business activities in South Carolina of the foreign corporation, by service of the summons and complaint upon the Secretary of State of South Carolina, after the foreign corporation has withdrawn from South Carolina?" The court affirmed the order of the trial court which answered this question in the negative and dismissed the service and complaint.

Foster et al. v. Morrison et al., 84 S. E. 2d 344. James P. Mozingeo, III, John L. Nettles, Benny R. Greer, Keith A. Gatlin, Darlington, Bell, Horn, Bradley & Gebhardt of Charlotte, N. C., for appellants. Herbert & Dial of Columbia, for respondent.

taxation

HAWAII

Territorial tax, when measured by gross income derived from local broadcasting activities, ruled valid as not constituting a burden on interstate commerce.

The appellants, owners and operators of a radio station in Honolulu, Territory of Hawaii, sought to recover taxes paid under protest, which were assessed under Chapter 101, Revised Laws of Hawaii, 1945, known as the "general excise tax" or the "gross income" tax law. This statute imposes a tax upon sales, services and in general, all types of business in the territory measured by gross receipts. It was assessed against the appellants upon the gross receipts derived from the transmission of broadcasts to the radio audience in the territory, receipts from programs transmitted by short-wave relay having been excluded from the assessment. The appellants challenged the tax on the grounds that it was a burden on interstate commerce and that it was not within the power of the territory to exact such a tax.

The United States Court of Appeals, Ninth Circuit, observed that it could not be disputed that the Legislature of Hawaii could levy an excise tax. The question to be determined was whether the tax was a burden on interstate commerce. After reviewing pertinent decisions of the Supreme Court of the United States the court, affirming the decision of the Supreme Court of Hawaii, ruled the tax was valid and constitutional as applied to the local broadcasting business of the appellants.

McCaw et al. v. Fase, 216 F. 2d 700. Kenneth Davis, of Seattle, Washington, David N. Ingman, of Honolulu, Hawaii, Justin Miller, Gen. Counsel, Pacific

Palisades, for appellants. Vincent T. Wasilewski, Atty. of Washington, D. C., Edward N. Sylva, Atty. Gen., Rhoda V. Lewis, Deputy Atty. Gen., for appellee. (*Petition for writ of certiorari filed in the Supreme Court of the United States, December* 13, 1954; *Docket No.* 481. *Certiorari denied,* January 31, 1955.)

NEBRASKA

Intangibles tax rate on bank stock in excess of rate on corporate stock generally ruled unenforceable by State Supreme Court.

The plaintiffs, banks organized under the law of the United States, in three original actions sought declaratory judgments to determine the rate of taxation on their shares of stock. The Supreme Court of Nebraska said that the precise question was whether the plaintiff's stock was assessable at four mills on the dollar of the actual value as provided in Section 77-703, R. S. Supp., 1953, or at eight mills as provided in Section 77-709, R. R. S. 1943.

The court reviewed the legislative and judicial history of the intangibles tax law. It noted that the legislature had classified all intangibles, other than money and certain intangibles, in one class and that the tax rates levied on all intangibles in that class had been reduced, except that levied on bank stocks. The tax on corporate stock generally was at the rate of four mills per dollar and at the rate of eight mills per dollar on bank stocks.

The court rendered judgment for the plaintiffs. It ruled that Section 77-709, R. R. S. 1943, in so far as it purported to authorize a levy of taxes upon shares of stock of banks, industrial loan and investment companies, and trust companies, in excess of four mills on the dollar as provided by Section 77-703, R. S. Supp., 1953, violated the rule of uniformity as to class required by Article VIII, Section 1 of the State Constitution and to that extent was unenforceable.

*Omaha National Bank v. Heintze et al.,** 67 N. W. 2d 753. Wells, Martin & Lane, of Omaha, for Omaha Nat. Bank. Finlayson, McKie & Kuhns, of Omaha, for First Nat. Bank of Omaha. Morsman, Maxwell, Fike & Sawtell, of Omaha, for United States Nat. Bank of Omaha. Clarence S. Beck, Atty. Gen., Clarence A. H. Meyer, Deputy Atty. Gen., Homer L. Kyle, Asst. Atty. Gen., for defendants.

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* The full text of this opinion is printed in the **State Tax Reporter,** Nebraska, page 2806.

NEW JERSEY

State Supreme Court affirms ruling upholding state in including Federal tax-exempt bonds in the calculation of the net worth of corporation liable to the franchise tax.

In *Werner Machine Co. v. Director, Division of Taxation,* 107 A. 2d 36, (The Corporation Journal, December 1954—January, 1955, page 55), the Superior Court of New Jersey, Appellate Division, held that the state had the right to

include Federal tax-exempt bonds in the calculation of the net worth of a corporation subject to the franchise tax. Upon appeal, this judgment has been affirmed by the Supreme Court of New Jersey. That court noted that a franchise tax is not laid directly on persons or properties, the tax in question being upon the corporation for the privilege of exercise by it of corporate powers in the state and not being measured by the nature or source of the securities in which some or all of the assets of the corporation are invested. The court found that the franchise tax does not impose a tax upon securities of the United States.

*Werner Machine Company, Inc. v. Director of Division of Taxation,** 110 A. 2d 89. Leopold Frankel (Frankel & Frankel, attorneys) of Paterson argued the cause for appellant. Harold Kolovsky of Trenton argued the cause for respondent (Grover C. Richman, Jr., Atty. General, attorney; Joseph A. Murphy, Asst. Deputy Atty. General, on the brief).

* The full text of this opinion is printed in the **State Tax Reporter,** New Jersey, page 10,030.

PENNSYLVANIA

The Corporation Income Tax Act of 1951 ruled not applicable to a foreign corporation engaged only in furthering interstate commerce in the state.

Defendant foreign corporation resisted the imposition of the Corporation Income Tax Law of 1951 upon it as a violation of the interstate commerce clause, the Fourteenth Amendment and the Equal Protection clause of the Federal Constitution. The defendant was engaged in interstate commerce, consisting of orders for its manufactured products received from its salaried employees in Pennsylvania, and shipments into Pennsylvania of its photographic equipment and other manufactured products from its plants outside Pennsylvania. The essential question was whether the solicitation of such business resulting in gross receipts attributable to Pennsylvania was a local activity carried on within the state, or whether it was an activity that was an integral part of interstate commerce which could not realistically be separated from the interstate process.

The Court of Pleas of Dauphin County, after an examination of numerous decisions of the Supreme Court of the United States and of the Pennsylvania Supreme Court, giving particular consideration to *Roy Stone Transfer Corporation v. Messner et al.*, 377 Pa. 234, 103 A. 2d 700, (The Corporation Journal, June—July, 1954, page 352), concluded that the defendant was engaged in interstate commerce, that the solicitations of orders were not local activities subject to the tax, that the solicitation of business in the state by defendant's employees and its gross receipts therefrom were such an integral part of interstate commerce that they could not realistically be separated from that commerce so as to make such activities subject to the tax, that the compensation and gross receipts fraction provided in apportionment could not be applied, that the property fraction could not be applied to the defendant's automobiles situated in Pennsylvania used in soliciting orders in interstate commerce and, finally, that the act was unconstitutional in its application to the defendant under the facts in the case.

Commonwealth of Pennsylvania v. Eastman Kodak Company, Court of Common Pleas, Dauphin County, January 31, 1955. Commerce Clearing House Court Decisions Requisition No. 530991.

VERMONT

Franchise tax on foreign corporations held levied only for the privilege of doing business in the state and not for doing business in an organized or corporate capacity.

Petitioner, a Maine corporation, with its principal office in Portland in that state, licensed to do business in Vermont, conceded it was liable for the minimum franchise tax, but contended that any franchise tax assessed against it in excess of the minimum violated the Commerce Clause of the Federal Constitution. The company owned a pipe line for the transportation of oil from Maine through the states of New Hampshire and Vermont to the Province of Quebec, Canada. It had no offices in Vermont, made no sales there and never made any charge for services performed in Vermont. It owned a pumping station in that state until 1952, which it had operated until 1950 to accelerate the flow of oil through its pipe line. The only wages and other compensation paid to employees within Vermont were to a crew at the pumping station and to a crew of temporary employees engaged in 1952 in cleanup work along its pipe lines, resulting from a break in one of the lines. It had paid all town and school district taxes assessed during the years 1948—1952 inclusive. It had been qualified since January 1, 1947. It had been assessed and had paid under protest franchise taxes for the years 1942—1948, inclusive, in the aggregate amount of $14,435.14.

These taxes were assessed under a statute which imposed a franchise tax upon a foreign corporation to be measured by its net income "for the privilege of doing business in this state". The Supreme Court of Vermont noted that it had previously held that "the Vermont franchise tax levied on foreign corporations is a tax for the privilege of doing business and not a direct tax on allocated income" in *Union Twist Drill Co. v. Harvey,* 113 Vt. 502, 508; *Ruppert v. Commissioner of Taxes,* 117 Vt. 83, 87. The petitionee, however, claimed that the franchise tax was more than this and that, because the legislature levied a tax against a domestic corporation for the privilege of exercising its franchise in the state in an organized or corporate capacity, by necessary implication the legislature intended to levy a franchise tax against foreign corporations for doing business in an organized or corporate capacity.

The court rejected this contention, concluding that it was the real meaning and purpose of the legislature "to levy a franchise tax on foreign corporations only for the privilege of doing business in this state".

*Portland Pipe Line Corp. v. Morrison,** 110 A. 2d 700. Witters, Longmoore & Akley of St. Johnsburg, Vt., Hutchinson, Pierce, Atwood & Scribner of Portland, Me., for plaintiff. F. Elliott Barber, Jr., Atty. Gen., Robert T. Stafford, Deputy Atty. Gen., for defendant.

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* The full text of this opinion is printed in the **State Tax Reporter,** Vermont, page 1359.

state legislation

Georgia — Act 92 changed the due date of corporation income tax returns of calendar year companies from March 15 to April 15 and of fiscal year companies to the 15th day of the fourth month following the close of the fiscal year.

Idaho — Chapter 18 repeals the provisions reducing by 15% the amount of income tax payable by corporations and individuals with respect to taxable years ending after December 31, 1954.

Chapter 17 authorizes the State Tax Collector to grant a 31-day extension of time for the filing of income tax returns during 1955 and subsequent years, without interest. Under this authorization, calendar year returns are due in 1955 on April 15 and fiscal year returns are due on the 15th day of the fourth month following the close of the fiscal year, in accordance with an order of the Tax Collector.

Chapter 27 exempts from local ad valorem property taxes personal property stored in original packages in a public warehouse, when owned by those having neither domicile nor place of business in Idaho.

Iowa — Senate Bill 22 changes the time for filing the Business (Income) Tax Return and for paying the tax to "on or before the last day of the fourth month after the expiration of the tax year".

Montana — House Bill 32 provides that stockholders representing a majority of the outstanding capital stock of the corporation shall constitute a quorum in a meeting of stockholders called to amend the charter and that the amendment may be adopted by the affirmative vote of a majority of the outstanding shares.

North Carolina — House Bill 21 changed the date for filing intangible property tax returns from March 15 to April 15.

Ohio — Senate Bill 82 brings about a change in the filing of the Annual Franchise Tax Report. This will hereafter be filed with the State Treasurer.

Utah — House Bill No. 32 grants corporations power "to make donations for the public welfare or for charitable, scientific, religious or educational purposes".

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

HAWAII. Docket No. 481. *McCaw et al. v. Fase,* 216 F. 2d 700. (The Corporation Journal, April—May, 1955, page 92.) Territorial gross income tax—broadcasting activities—interstate commerce. **Petition for writ of certiorari filed, December 13, 1954. Certiorari denied, January 31, 1955.**

MARYLAND. Docket No. 515. *Compania de Astral, S. A. v. Boston Metals Company,* 107 A. 2d 357. (The Corporation Journal, December 1954—January 1955, page 47.) Service of process on foreign corporation—amenability to suit. **Petition for certiorari filed, January 5, 1955. Certiorari denied, February 14, 1955.** (75 S. Ct. 365.)

NEW YORK. Docket No. 473. *Gulf Oil Corporation v. Joseph,* 307 N. Y. 342, 121 N. E. 2d 360. (The Corporation Journal, February—March, 1955, page 72.) New York City gross receipts tax—minimum allocation percentage—validity. **Appeal filed, December 9, 1954. January 31, 1955:** *"Per curiam:* The motion to dismiss is granted and the appeal is dismissed." (75 S. Ct. 339.)

OKLAHOMA. Docket No. 512. *S. Howes Company, Inc. v. W. P. Milling Company,* 272 P. 2d 1039, 277 P. 2d 655. (The Corporation Journal, October—November, 1954, page 34.) Service, under statute, on state official as agent for unlicensed foreign corporation. **Appeal filed, January 3, 1955. Jurisdiction noted, February 28, 1955.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin,** 1954-1955.

regulations and rulings

Alabama — Raw materials produced during the current calendar year and stock at a plant for manufacturing purposes in Alabama are exempt from ad valorem taxes for twelve months after manufacture when they are stored at or near the place of manufacture or within the county in which they were manufactured. (Opinion of the Attorney General, State Tax Reporter, Alabama, ¶ 24-005.)

Materials imported from a foreign country into Alabama and stored in their original package are exempt from ad valorem taxation. However, merchandise manufactured in one state and stored in another is subject to the tax. (Opinion of the Attorney General, State Tax Reporter, Alabama, ¶ 24-006.)

Florida — A foreign mutual insurance company which intends to make investments only in Florida and not to carry on insurance business there, may make such investments without paying the charter tax required of other foreign corporations, provided it complies with the other laws applicable to admission of foreign corporations. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Florida, ¶ .401.)

Idaho — The 15% income tax credit was repealed with respect to taxable years ending after December 31, 1954, by Chapter 18, Laws of 1955. Such portion of fiscal taxable year income that falls within the calendar year 1954 will be eligible for the 15% credit. (Ruling of State Tax Collector, State Tax Reporter, Idaho, ¶ 16-013.)

New York — A corporation cannot pay a dividend to itself and, therefore, where a stock dividend was declared on treasury stock but no shares were issued, the subsequent sale by a corporation of previously unissued shares constituted an original issuance which is not subject to the stock transfer tax. (Opinion of the Attorney General to the Department of Taxation and Finance, New York Corporation Law Reporter, ¶ 10,923.)

North Carolina — A corporation organized to promote and encourage the development of business and commerce in a community is exempt from franchise and income taxes if no part of any profit inures to the benefit of shareholders. The fact that its main asset is a heating plant does not affect its exempt status, since the heating plant is the main requirement for the location of new business in the community. The corporation's charter should make provision so that in case of dissolution none of the assets could be distributed to shareholders, although the return of capital to the stockholders not in excess of 90% of the par value does not defeat the exemption. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 200-002.)

A foreign real estate corporation holding farm land in North Carolina and operating it on a share-crop basis is doing business and must domesticate. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 2-012.)

Oklahoma — A foreign corporation domesticated in the state, having an authorized capital of shares without par value, is not exempt from the filing of an annual affidavit by giving the no par value shares a par value of $50. each and paying a domestication fee accordingly. (Opinion of the Attorney General, State Tax Reporter, Oklahoma, ¶ 33-500.)

some important matters

For April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Annual Franchise Tax due April 1 but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Arizona — Income Tax Return and Returns of Information at the source due on or before April 15.—Domestic and Foreign Corporations.
Quarterly Withholding Tax due on or before April 30.

Arkansas — Corporation Income Tax Return and Returns of Information at source due on or before May 15.—Domestic and Foreign Corporations.

California — Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Colorado — Corporation Income Tax Return due on or before April 15.
License Tax due May 1.—Domestic and Foreign Corporations.
Quarterly Withholding Tax due on or before April 30.

Connecticut — Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Delaware — Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.
Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to residents of Delaware during 1954.
Withholding at source Returns due April 30.—Domestic and Foreign Corporations paying compensation to Delaware employees.

District of Columbia — Franchise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.
Annual Reports of companies incorporated, reincorporated or qualified under the Business Corporation Act of 1954 due on or before April 15.

Georgia — Corporation Income Tax Return due April 15.

Idaho — Corporation Income Tax Return due April 15.

Indiana — Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Iowa — Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Kansas — Corporation Income Tax Return due April 15.

Kentucky — Income Tax and Corporation License Tax Return due on or before April 15.—Domestic and Foreign Corporations.
Quarterly Withholding Tax due on or before April 30.

Louisiana — Corporation Income Tax Return due on or before May 15.

Maryland — Annual Report (Personal Property Return) and Franchise Tax Report and Tax due on or before April 15.—Domestic Corporations.
Income Tax Return due April 15.—Domestic and Foreign Companies.
Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.
Withholding Tax due on or before April 30.

Massachusetts — Corporation Excise Tax Return due on or before April 15.

Michigan — Annual Report and Franchise Tax due on or before May 15.—Domestic and Foreign Corporations.

Mississippi — Corporation Income Tax Return and Returns of Information at the source due on or before April 15.

Missouri — Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

Montana — Returns of Information at the source due on or before April 15.
Annual Statement due in April and May.—Foreign Corporations.

New Jersey — Franchise Tax Report and Tax due on or before April 15.—Domestic and Foreign Corporations.

New Mexico — Corporation Income Tax Return due on or before April 15.
Franchise Tax due May 1.—Domestic and Foreign Corporations.

New York — Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A Tax Law) and one-half of tax due May 15.—Domestic and Foreign Business Corporations, Holding Companies and Investment Trusts.

North Carolina — Intangible Property Tax Return due April 15.

North Dakota — Income Tax Return and Returns of Information at the source due on or before April 15.—Domestic and Foreign Corporations.
Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Oregon — Corporation Excise (Income) Tax Return due on or before April 15.
Withholding Tax due on or before April 30.

Pennsylvania — Corporation Income Tax Return due on or before April 15.

Rhode Island — Business Corporation Tax Return and Tax due on or before May 1.—Domestic and Foreign Corporations.

South Dakota — Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

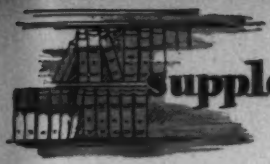
Texas — Franchise Tax due May 1.—Domestic and Foreign Corporations.

Utah — Quarterly Retail Sales Tax Returns and Payments due on or before April 30.—Domestic and Foreign Corporations.

Vermont — Income (Franchise) Tax Return due on or before May 15.

Virginia — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.
Income Tax due June 1.—Domestic and Foreign Corporations.

West Virginia — License Tax Report due in April.—Foreign Corporations.
Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.



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In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Corporate Tightrope Walking. A look at recent developments which affect corporations carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

A Pretty Penny . . . Gone! The troubles that descend upon a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

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THE CORPORATION TRUST COMPANY
120 Broadway, New York 5, N. Y.

Form 3547 requested

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

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